A "Top 10" List

Common Mis-understandings about Labor Standards in Trade Agreements

There have been many myths, assertions, and arguments raised in regard to the inclusion of enforceable, internationally-recognized, core labor standards in U.S. free trade agreements (FTAs). This document responds to the most common assertions and questions to set the record straight.

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Question 1: ***Are we trying to force U.S.-style labor standards on developing countries?***

Answer: **No. This is a straw man argument, attacking Democrats for a position that they do not actually hold. Democrats have made very clear that we are not seeking American standards — rather, the five basic international standards developed by the ILO and supported by virtually every country in the world, no more and no less.** Democrats have sought to have FTA partners adopt and implement only these five basic international labor standards — the rights to associate and to bargain collectively, and prohibitions on child labor, discrimination in employment, and forced labor. Virtually every country in the world has recognized that these five labor standards are "fundamental."

Question 2: ***Would the inclusion of labor and environmental standards undermine the comparative advantage of evolving economies?***

Answer: **No. In fact, such claims about labor and environmental standards underscore their basic nature as economic, not merely social, issues**. In any event, requiring countries to respect basic floors of competition in the labor area is no different than requiring respect for basic floors in other areas. For example, a country may allow companies to reverse-engineer foreign innovations and may refuse to recognize intellectual property rights. While perhaps providing a competitive advantage, this is not viewed as a legitimate source of "comparative advantage," and rules have been built into trade agreements to prevent this type of unfair advantage. (The new flexibility in WTO intellectual property rules for developing countries to promote access to medicines is the exception that proves the rule in this case.)

Democrats do not believe that abuse of fundamental labor standards – *e.g.*, the use of child labor or forced labor, allowing employers to harass labor leaders with impunity – constitutes a legitimate source of comparative advantage. Indeed, workers in all developing countries would be better off if there was a floor of competition to stop the race to the bottom. A *New York Times* article from April 2001 ("Labor Standards Clash with Global Reality") described labor abuses in the textiles and apparel industry in Central America. The article quoted the President of El Salvador regarding problems in maintaining basic standards, who stated, "The difficulty in this region is that there is labor that is more competitively priced than El Salvador." A floor in the region would help address this "difficulty." (See also, Question 4 and Question 8.)

If globalization is seen by the public as a code word for endorsing a global race to the bottom, then public support will be eroded. This will threaten the important progress and benefits that globalization can bring.

Question 3: ***Are labor and environmental issues used as an excuse for protectionism and to vote against any trade agreement?***

Answer: **No. Each trade-expanding agreement or program in the last five years has included provisions relating to labor standards — and those provisions have been essential to the success of the trade-expanding effort in each case**. The programs have included expanded trade benefits to Caribbean and African countries, a special textile agreement with Cambodia, and the FTA with Jordan. **Democrats have been at the forefront of each of these efforts to strengthen labor standards AND expand trade.** The inclusion of labor standards provisions in these efforts was not used to close off trade, but was critical to the success of the trade-expansion in each.

Additionally, this argument shows a clear misunderstanding of Democrats' position. Democrats have not sought to close off trade over the labor standards issue. Democrats' position is that if a country wants to have preferential access to the U.S. market (through a unilateral program or through a special trade agreement like an FTA), then the U.S. should include in the program or the trade agreement an obligation for countries to respect the five fundamental labor standards. Otherwise, the U.S. could be giving preferential access to exports made from child labor or forced labor, or from factories that intimidate, harass, or even use violence against workers trying to organize.

Third, the assertion that labor standards provisions in trade initiatives will be used for protectionist purposes is refuted by 20 years of history. Since 1983 — more than 20 years — U.S. unilateral preferences programs that provide trade benefits to developing countries (now including the GSP, CBI, ATPA, and AGOA programs) have included conditions related to labor standards. During that 20-year history, these programs have substantially expanded trade and helped to raise labor standards. There is simply no history of abuse of labor provisions.

Question 4: ***If we impose basic labor standards on developing countries, will this keep them in poverty?***

Answer AS TO "IMPOSING" STANDARDS: The suggestion that the United States is attempting to "impose" standards on developing countries is misguided in several respects.

First, virtually every developing (and developed) country has endorsed an ILO Declaration recognizing their obligation to respect the five fundamental standards — there is no question about "imposing" these basic standards on a developing country. The only issue in virtually every case is whether a country is prepared to live up to its commitment to implement the standards in domestic law and enforce them.

Second, it has been common for more than a decade for trade and investment agreements to include obligations that require countries to change a wide range of domestic laws and regulations. For example, trade and investment agreements often require changes to domestic laws setting product standards, domestic food safety and health standards, domestic copyright and patent laws, domestic property laws, domestic telecommunications regulations, domestic prudential regulations pertaining to banking and insurance; the list goes on. To the extent a country's laws may not comport to the standard included in the trade agreement, the agreement requires a change to those laws — effectively "imposing" such a change. **In light of this fact, it is incumbent upon those making the argument to explain why labor standards should be EXCLUDED from trade and investment agreements when many other important areas of domestic law and policy are affected by international agreements.**

Answer AS TO LABOR STANDARDS AND "KEEPING COUNTRIES IN POVERTY": There is no empirical support for the proposition that abuse of basic labor standards is essential or even helpful in promoting development — to the contrary, all developing countries would be better off if there were a floor of competition to stop the race to the bottom. In this way, developing countries would be competing for labor-intensive investment on the basis of legitimate factors (wages, labor productivity, other natural resources, tax rates, infrastructure, etc.). And, workers in developing countries would have a better chance to move up the economic ladder, increasing rather than decreasing the prospects for development in these countries. This view is bolstered by the history of the United States 100 years ago, when we were industrializing, as developing countries are industrializing today. At that time, basic labor standards were an essential ingredient in the creation of the middle class in the United States.

Question 5: ***If we sought to include enforceable core labor standards in trade agreements, would that mean that the U.S. would never conclude another trade agreement, because no country would be willing to accept these provisions?***

Answer: No. This argument shows an ignorance of existing U.S. trade agreements and programs.

First, Jordan SOUGHT provisions in its FTA with the U.S. effectively requiring enforcement of basic labor standards.

Second, most developing countries are already subject to unilateral determinations by U.S. authorities as to whether they are making sufficient effort to promote basic labor standards, subject to penalties determined UNILATERALLY by the United States. By concluding a trade agreement with the United States these countries would eliminate this unilateral power of the United States in favor of a system in which

determinations of labor standards violations, and the penalty that may be imposed, would be made by independent arbitrators. Thus, those making this argument are effectively arguing that developing countries would prefer that the U.S. have unilateral power to determine labor standards violations over a system where U.S. power was limited by an independent arbitration panel.

Third, as noted, the premise that labor standards are an inappropriate element to include in a trade agreement ignores decades of experience in trade negotiations. Over time, trade negotiations have moved from covering only tariffs, to include obligations that affect a wide variety of areas of domestic law and policy. (See question 4 above.)

Question 6: ***Should labor standards be left to the ILO?***

Answer: No, because while the ILO has expertise, it has no powers of enforcement. The ILO has increased attention to the status of basic labor standards in developing countries and it is increasing its technical assistance. But it has no powers of enforcement. In that sense, it is misguided to compare it with the WTO — or free trade agreements — with their binding dispute settlement and enforcement mechanisms.

An identical argument was made by most developing countries with respect to intellectual property (IP) rights before the creation of the WTO, and was rejected by the United States. Developing countries argued that there was no need to bring IP rights into the WTO because there was already an organization (the World Intellectual Property Organization, WIPO) created to deal with IP rights internationally. The U.S. rejected this argument, however, because WIPO had no capacity to enforce violations of IP rights. Accordingly, obligations to respect core IP rights were added to enforceable trade agreements. This approach was the right one as to core IP rights and it is the right one for core labor standards.

The bottom line is, if an issue has an impact on trade and investment, it is legitimate and sensible to include that issue in an agreement setting forth the rules for trade and investment. Fundamental labor standards, like fundamental IP rights, affect trade and investment.

Question 7: ***Will the inclusion of labor standards in trade agreements open U.S. laws to challenge and threaten American sovereignty?***

Answer: No. This argument is far-fetched — and those who make it do so in the face of several key inconsistencies.

The first inconsistency is that those who oppose inclusion of basic labor standards in trade agreements allege the U.S. is trying to impose its own high developed-country standards on other countries, then turn around and question whether U.S. law meets even minimum ILO standards! These critics cannot have it both ways. Notably, these critics offer no evidence to support either argument.

The second inconsistency, as noted, is that international trade rules now enable trading partners to challenge a wide variety of aspects of U.S. domestic law and policy, from food and safety standards to telecom antitrust provisions. In fact, U.S. laws on gasoline standards, gambling regulation, domestic farm subsidies, copyright protection, patent protection, food health and safety inspections, and government procurement have already been challenged under trade agreements. In light of this broad scope, those making this "sovereignty" argument either are ignorant as to the range of domestic laws and regulations that already may be challenged by our trading partners, or are hypocritical about their level of concern about such challenges.

Question 8: ***For people in poor countries, isn't insisting on labor standards in trade agreements making the perfect the enemy of the good? Isn't a job under poor, even exploitative, conditions better than no job at all?***

Answer: There are a number of basic problems with this line of argument. **First, the Democratic position does not seek "perfection." Rather, the Democratic position calls on countries to adopt and enforce five BASIC labor standards**, explicitly allows a PHASE-IN PERIOD, and calls for ASSISTANCE and INCENTIVES to help meet these standards. It is inconsistent, to say the least, for the U.S. to negotiate with developing countries for state-of-the-art standards in intellectual property protections, prudential regulations that protect banking and insurance companies, and competition principles for telecommunications firms, while not seeking even the most basic standards for workers.

Second, taken to its logical conclusion, the premise of the question is a radical argument against almost any government regulation in developing countries that, theoretically, could raise the costs of production (and thus theoretically lead to fewer jobs).

The argument is flawed because of the false premise upon which it is based: that there is a necessary trade-off between respect for core labor standards (and other governmental regulation) and employment levels. If this were the case, the United States and the European Union would be facing massive unemployment, while countries like Burma – which allows forced labor – would have booming economies. The fact is, markets work, businesses thrive, and economies develop, not in a "free for all" race to the bottom, but when there is a backdrop of sensible and stable government regulation of

the economy and a system that respects the rule of law. Democrats believe that fundamental labor market standards are one, integral part of any such system (as are respect for property rights and contracts).

In short, there is no empirical support for the proposition that abuse of basic labor standards is essential or even helpful in promoting development. (See Question 2 and Question 4.)

Third, the question sets up a false choice between improved labor standards and development. Experience over the last five years – in Cambodia, the Jordan FTA, and the CBI and AGOA programs – demonstrates that incorporating labor standards and expanding trade are mutually reinforcing goals.

Moreover, countries can gain an advantage and expand employment by marketing themselves as upholding high labor standards. Take the example of Cambodia, in which major businesses that had left the country due to allegations of labor rights abuses reinvested following labor standard improvements resulting from a 1998 trade agreement with the United States. This experience stands in contrast to a recent statement in the *New York Times* by Nicholas Kristof that for Cambodia and other developing countries, "the fundamental problem ... is not that sweatshops exploit too many workers; it's that they don't exploit enough."

Question 9: ***If we really want to improve the labor standards in developing countries, is the best way to do that through technical assistance and positive incentives, rather than "trade sanctions"? Moreover, USTR claims that the CAFTA technical assistance and process reform provisions are "groundbreaking."***

Answer: On the subject of technical assistance generally, if this argument were true, there would be no reason to conclude trade agreements at all. The United States could just use technical assistance and positive incentives to get other countries to respect intellectual property, protect U.S. investors, use science-based health and safety standards, stop providing export subsidies, etc. One of the central purposes of a trade agreement is to establish a set of common rules for international competition. So long as these rules make sense, then it is hard to understand why they should not be enforceable.

Second, those who have argued most vigorously for technical assistance as the way to promote labor standards – the Bush Administration and Congressional Republicans – have a "credibility gap" on technical assistance. They have been the first to propose radical cuts to the very technical assistance programs that they ostensibly consider the solution. Each Bush Administration budget has proposed reductions of the funding for the U.S. agency that provides labor technical assistance to developing countries. (The FY 2004 budget called for a 92% cut; the FY 2005 budget calls for a

72% cut from FY 2004 appropriations levels). Moreover, the Administration has changed the focus of the projects it does fund – it has started replacing projects that improve labor laws and strengthen the capacity of workers' organizations with "soft" projects related to promoting private codes of conduct, training, and productivity.

Additionally, this argument is a red herring. Creating enforceable rights, and promoting respect for those rights via technical assistance and positive incentives are not mutually exclusive. They are complementary. In fact, the basic Democratic position seeks not just a binding commitment with respect to fundamental labor standards in trade agreements, but also a period of phased-in compliance (to give countries time to comply) coupled with positive incentives for improvements and a significant and sustained commitment of technical assistance.

As to the assertion by USTR that the CAFTA contains a "groundbreaking" Mechanism for Cooperation and Technical Assistance – that is simply not the case.

First, the Mechanism is not "groundbreaking." To the contrary, it is a watered-down version of an old idea. The Mechanism is virtually identical to a forum set up under the NAFTA – except that the NAFTA forum, unlike the CAFTA Mechanism, is actually required to meet periodically, and to review the operation of the NAFTA labor side agreement.

Second, the CAFTA includes language specifically designed to prohibit the Mechanism from addressing the most serious labor issue in the region – deficiencies in the countries' labor laws.

Third, the Mechanism is primarily a "bell and whistle," purposely designed to have very little authority. The CAFTA Mechanism includes only ONE firm requirement – that the labor officials involved in the Mechanism meet once within 6 months of the Agreement's entry into force. After this meeting, there is no longer any clear role for the Mechanism; the labor officials are not required to meet again, nor are they required to move forward with any projects.

Fourth, the Administration's failure to support technical assistance and capacity building throws into question the commitment to use the Mechanism effectively (see above).

Question 10: ***Are Democrats abandoning the Clinton Administration legacy on trade and turning protectionist?***

Answer: **No, quite the opposite. Most of what has been written about the "Clinton trade legacy" misrepresents what that legacy was, as well as the current position of Democrats.** President Clinton did indeed favor expanded trade. His Administration did

not, however, believe that expanded trade should be a "free for all." **The Clinton Administration increasingly integrated into its trade policy basic rules on labor, environmental, and other issues to shape expanded trade**.

President Clinton made clear in 1999 and 2000, that "those who wish to roll back the forces of globalization" and those who "believe globalization is only about market economics" are both "plainly wrong"; we must "continue to expand trade, but on terms that benefit all people," that "lift everybody up, not pull everybody down."

A series of concrete trade-expanding steps in the last years of the Clinton Administration moved U.S. trade policy in this direction. A ground-breaking agreement gave Cambodia increased access to the U.S. textiles and apparel market as Cambodia improved its labor enforcement; initiatives with African and Caribbean countries increased trade while ensuring that they made progress toward respecting the basic labor standards; a free trade agreement with Jordan was the first such agreement to include binding obligations with respect to basic labor standards that were enforceable just as all other provisions of the agreement. The Clinton Administration also substantially increased funding to help developing countries improve their labor standards.

It is not Democrats, but the Bush Administration that has diverged from the Clinton trade legacy. The Bush Administration has completely dropped the parity of enforcement that was an important innovation in the Jordan FTA. Additionally, the Jordan agreement effectively required the country to enforce the five basic international labor standards. The Bush Administration has twisted this into an "enforce your own law" standard in negotiations with countries in Central America that have significantly deficient labor laws and have demonstrated hostility to enforcing their weak laws.

While talking a lot about "technical assistance" and trying to use it as an excuse for inadequate labor provisions in trade agreements, the Bush Administration budgets have sought to slash by as much as 92 percent the funds available to the office that implements these programs.

The Bush Administration has alienated Democrats critical to the broad bipartisan majority that moved expanded trade forward under the Clinton Administration. Democrats are not seeking to close off trade, but are striving to re-assert the appropriate framework of rules that evolved during the Clinton years.